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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1947

No.

BAUMER FOODS, INC., *a corporation,*
Petitioner,

vs.

G. I. GRIFFITH,
Respondent,

BRIEF OF THE RESPONDENT ON PETITIONER'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

JURISDICTION

The Federal courts have jurisdiction of the controversy here involved because of the diversity of citizenship of the parties hereto, the petitioner being a resident of the State of Louisiana and the respondent being a resident of the State of Washington, and

further because the amount for which petitioner seeks judgment against the respondent is the sum of $4,407.94 together with interest thereon at the rate of six per cent per annum from the first of November, 1945.

STATEMENT OF THE CASE

In addition to the Statement of the Case set forth in petitioner's brief and petition, we desire to point out that the transaction over which this lawsuit arose took place in the summer of 1945 (see paragraph 3 of the first cause of action in plaintiff's first amended complaint, R. p. 5), which date was after the Uniform Limited Partnership Act became effective in the State of Washington. It is further admitted that at no time has the respondent Griffith received any profits from the Midfield Packers, nor has he ever received any return whatsoever on the investment he made therein. (R. p. 62). It should be kept in mind that the petitioner, Baumer Foods, Inc., was in no manner prejudiced or deceived by Griffith's failure to comply with some of the statutory requirements for the formation of limited partnerships. The petitioner is a resident of and does business in the State of Louisiana, and as the learned

District Judge observed in his opinion, "It is admitted here, that the plaintiff in his dealings with the general partners, at no time relied upon the credit status or standing of the defendant Griffith. In fact, the history and background of this litigation clearly indicates the plaintiff had no knowledge that Griffith was even identified with this concern, doing business under the assumed name of Midfield Packers." (R. pp. 69, 70).

It is further admitted that the respondent took no part in the operation or management of the business of the Midfild Packers except that on one occasion he accompanied the managing partner of that concern in an attempt to negotiate a loan for the construction of a building (See Finding of Fact XIII, R. p. 21).

QUESTION PRESENTED

May this respondent avail himself of the relief afforded by Section 11 of the Uniform Limited Partnership Act, which section is as follows:

> "§9975-11. Status of person erroneously believing himself a limited partner. A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner

in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership: *Provided,* That on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income. (L. '45, ch. 92, §11, p. 249.)"

ARGUMENT

Petitioner's argument is confined to the proposition that the decisions of the courts below are contrary to the law as announced in the decision of this Court in *Giles v. Vette,* 263 *U. S.* 562. It is admitted here that the Uniform Limited Partnership Act as passed by the State of Illinois and as interpreted by this Court in the Giles case, supra, is identical in every respect with the Uniform Act passed by the Washington Legislature in 1945. The Washington Act is found in Washington Laws of 1945, Chapter 92, §1-30, pp. 246-258, R. R. S. 9975-1 to 9975-30 (1945 Supp.), and the Illinois Act is found in Chapter 106½ Smith-Hurd Illinois Statutes, §44 to 73 inclusive.

It is further admitted that the statutes governing the liability of limited partners in both Washington

and Illinois, and in effect prior to the adoption of the Uniform Act in those States, are similar in all respects material to this controversy. See Illinois Limited Partnership Act of 1874 (Ch. 106½, §73 Smith-Hurd Illinois Annotated Statutes — Historical note p. 797) and the 1869 Limited Partnership Act of the State of Washington (R.R.S. 9966 to 9975).

It is further admitted that the rule imposing general liability on limited partners who failed to comply with the statute was in effect in both Washington and Illinois prior to the adoption of the Uniform Act in those states. Petitioner's excerpt from the Giles case, supra, set forth on page 16 of its brief announces the rule in Illinois prior to the adoption of the Uniform Act, and the cases cited illustrating that rule are all cases decided prior to the adoption of the Uniform Act in the various jurisdictions indicated. Specifically with reference to Section 30 of the Uniform Act, referred to in petitioner's brief, it should be noted that this section is contained in identical language in both the Washington and Illinois Uniform Acts as adopted by the legislatures of those states. Petitioner seeks to distinguish the facts

in the instant case from those in the Giles case, supra, by pointing out that in the case at bar, the partnership was doing business for several years prior to the adoption of the Uniform Act, while in the Giles case the partnership there involved did not commence business until one day subsequent to the adoption of the Uniform Act in Illinois. Petitioner then proceeds to dismiss as dicta the language in the Giles case set forth on page 18 of its brief. The answer to petitioner's argument is that the attempted distinction between the two cases does not in fact exist. In each case the parties concerned attempted to form a partnership under the old law. In the Giles case the parties knew nothing of the passage of the Uniform Act and made no attempt to comply with it in any respect. As a matter of fact, all the acts of the parties in that case in forming a limited partnership were accomplished prior to the adoption of the Uniform Act with the sole exception of the filing of their certificate and commencing business. The question before this court, therefore, in the Giles case was whether or not Section 11 of the Uniform Act applied to an organization which was formed under the old act without any regard or knowledge of the new one. That is precisely the situation that exists in the

case at bar. The respondent submits, therefore, that the language of this court, which the petitioner dismisses as dicta, is the particular portion of the opinion that answers the question before the court in that case. The court specifically stated that Section 11 of the Uniform Act applies to all limited partnerships and "its application should not be restricted to cases where there was an attempt to organize a limited partnership under that Act". (Giles v. Vette, 263 U. S. 553, 563) This court in the Giles case very plainly announced the rule with reference to Section 11 of the Uniform Act applicable to facts similar to those here present together with the reasons for its holding. Far from being dicta, the following language was determinative of the question presented to the court in that case:

> "Moreover, we think that §11 of the Uniform Limited Partnership Act was applicable and was properly invoked by Hecht and Finn. ***
>
> "Prior to the taking effect of that act, the courts of Illinois held that, at common law, all partners were liable without limitation for the debts of the firm, and that, in order to limit such liability, the statute authorizing limited partnerships must be complied with, or all those who associated under it would be liable as general partners. Henkel v. Heyman, 91 Ill. 96,

101; Manhattan Brass Co. v. Allin, 35 Ill. App. 336, 341; Walker v. Wood, 69 Ill. App. 542, 549, affirmed in 170 Ill. 463, 48 N. E. 919; Cummings v. Hayes, 100 Ill. App. 347, 353. And this is in harmony with decisions elsewhere under statutes similar to the Illinois Act of 1874. These cases illustrate how strictly the common-law rule against limitation of liability was applied, and how far the doctrine of constructive partnership was carried. It was thought that the strictness of the old act and decisions under it impaired the usefulness of limited partnerships as business organizations because of the risk that one contributing capital as a limited partner might be held liable without limitation. The Uniform Limited Partnership Act and the Uniform (General) Partnership Act, passed at the same time, relax the strictness of the rules against limitation of liability. Each provides that the rule that statutes in derogation of the common law are to be strictly construed shall have no application to it, and that the act shall be so interpreted and construed as to effect the general purpose to make uniform the laws of those states which adopt it. See §28 Uniform Limited Partnership Act; §4, Uniform (General) Partnership Act.

"Hecht and Finn contributed to the capital of the business, and each erroneously believed that he had become a limited partner in a limited partnership. Neither took any part in the control of the business or exercised any rights or powers in respect of it other than those which belong to one not a general partner. See §19, Act of 1874; §10, Uniform Limited Partnership

Act. They made the renunciation provided for. No person suffered any loss or disadvantage because it was not made earlier, or because of reliance on any statement in the certificate. All dividends paid on the $190,000 were returned. It need not be decided whether such return was necessary.

"Section 11 is broad and highly remedial. The existence of a partnership — limited or general — is not essential in order that it shall apply. *The language is comprehensive and covers all cases where one has contributed to the capital of a business conducted by a partnership or person, erroneously believing that he is a limited partner.* It ought to be construed liberally, and with appropriate regard for the legislative purpose to relieve from the strictness of the earlier statutes and decisions. See Logan v. Davis, 233 U. S. 613, 627, 628, 58 L. ed. 1121, 1128, 34 Sup. Ct. Rep. 685; United States v. Colorado Anthracite Co. 225 U. S. 219, 223, 56 L. ed. 1063, 1064, 32 Sup. Ct. Rep. 617; United States v. Southern P. R. Co. 184 U. S. 49, 56, 46 L. ed. 425, 429, 22 Sup. Ct. Rep. 285. *Its application should not be restricted to cases where there was an attempt to organize a limited partnership under that act.*" (Italics ours).

It is submitted, therefore, that the above rules are applicable to the case at bar, and that the respondent here may avail himself of the relief afforded by Section 11 of the Uniform Act, and that under the plain

terms of that section he may not be considered a general partner in the Midfield Packers, and that, therefore, he was properly dismissed as a defendant in this case by the courts below.

Respectfully submitted,

THOS. L. O'LEARY,
ERNEST L. MEYER,
Attorneys for Respondent.